

## **PUBLIC EMPLOYMENT RELATIONS BOARD [621]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby rescinds rule 621—1.8(20) and adopts new Chapter 13, “Mediators,” and new Chapter 14, “Arbitrators,” Iowa Administrative Code.

New Chapters 13 and 14 fulfills, in a more formal and available manner than in the past, the Board’s Iowa Code section 20.6(3) responsibility to “[e]stablish minimum qualifications for arbitrators and mediators, [and] establish procedures for appointing, maintaining, and removing from a list persons representative of the public to be available to serve as arbitrators and mediators.” While the Board has long maintained publicly available policies and procedures compliant with this statutory directive, they have not heretofore been reflected by Board rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1570C** on August 6, 2014, with written or oral comment, or requests for a public hearing, accepted through August 26, 2014. No request for public hearing was received and no written or oral questions, comments or suggestions were submitted. These amendments are identical to those published under Notice of Intended Action.

Neither new Chapter 13 nor new Chapter 14 provide for a waiver of their terms, but are instead subject to the Board’s general waiver provisions found at rule 621—1.9(17A,20).

After review and analysis of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 20 and Iowa Code section 279.17.

These amendments will become effective November 5, 2014.

The following amendments are adopted:

ITEM 1. Rescind rule 621-1.8(20) (*transferred to new 621—chapter 14 and amended*).

ITEM 2. Adopt the following **new** 621—chapter 13:

CHAPTER 13  
MEDIATORS

**621—13.1(20) Scope and authority.** This chapter applies to all mediators listed on the agency's Mediator List and to all persons applying for inclusion on the List.

**621—13.2(20) Definitions.**

“*Ad hoc mediator*” means a person included on the List who enters into an independent contractor agreement with the agency to provide mediation to parties requesting impasse services pursuant to Iowa Code section 20.20.

“*Advocate*” is a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, collective bargaining which includes mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. “*Advocate*” includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. “*Advocate*” also includes persons directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

“*FMCS*” means the Federal Mediation and Conciliation Service.

“*Qualified mediator list*” or “*list*” means the list maintained by the agency of mediators who have met the criteria set forth in this chapter.

**621—13.3(20) List and status of members.**

**13.3(1) *The list.*** The agency shall maintain a list of mediators consisting of persons who meet the criteria for listing contained in rule 621—13.4(20) and who remain in good standing.

**13.3(2) *Adherence to standards and requirements.*** Persons included on the list shall comply with the agency's administrative rules pertaining to mediation. Mediators shall conform to the ethical standards and procedures set forth in the current Code of Professional Conduct for Labor Mediators, as approved and published by the Association of Labor Relations Agencies, and chapter 11 of the Iowa Court rules. When in conflict, the Code of Professional Conduct for Labor Mediators shall take precedence over the Iowa Court rules.

**13.3(3) *Status of FMCS and ad hoc mediators.*** Ad hoc mediators and mediators employed by FMCS are not employees of the State of Iowa.

**13.3(4) *Rights of persons on the List.*** Placement on the list shall be at the sole discretion of the board.

**13.3(5) *Assignments.*** The agency has sole discretion to make and modify mediation assignments.

**621—13.4(20) Mediator listing.**

**13.4(1)** The list shall consist of three categories of mediators:

- a. the agency's professional staff;
- b. mediators employed by FMCS; and
- c. ad hoc mediators.

**13.4(2) *Application procedures for ad hoc mediators.*** Persons seeking to be included on the list must complete and submit an application to the agency. Applicants shall submit at least two professional references, preferably one reference from management and one reference from labor. The board will review the application under the criteria set forth in this rule and shall make a final decision as to whether an applicant may be placed on the list. Satisfactorily meeting all criteria does not entitle an applicant to inclusion on the list. Each applicant shall be notified in writing of the board's decision.

**13.4(3) *Knowledge and abilities.*** Applicants must establish requisite knowledge and abilities of the following:

- a. good verbal and written communication skills;
- b. the ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
- c. knowledge of Iowa Code chapter 20, the agency's administrative rules, and principles and practices of contracts, public finance, and labor relations; and
- d. the ability and willingness to conduct a mediation in a fair and impartial manner.

**13.4(4) *Experience.*** Applicants must demonstrate requisite experience in labor relations or mediation in one of the following ways:

- a. at least three years of collective bargaining experience in the public or private sector;
- b. at least three years of actual mediation experience;
- c. at least five years of other relevant experience in labor-related fields including but not limited to human resource management, industrial relations, and labor unionism;
- d. a law degree or a masters or equivalent degree in industrial or labor relations or alternative dispute resolution; or
- e. a combination of paragraphs (a)—(d) of this subrule.

**13.4(5) *Geographical location.*** Preference will be given to applicants residing in or near areas of the state where few other listed mediators reside.

**13.4(6) *Training.*** Prior to inclusion on the list, the following training must be completed:

- a. Formal training provided by the agency; and
- b. Mentorship in at least two disputes with an experienced, listed mediator. The board may require additional mentoring if deemed necessary.
- c. Training requirements may be waived by the board for applicants with prior public sector mediation experience.

**13.4(7) *Conflict of interest.*** Prior to inclusion on the list, all applicants must disclose potential conflicts of interest as defined in subrule 13.6(1).

**13.4(8) *Exemption.*** Persons on the agency's professional staff and mediators employed by FMCS shall not be required to submit an application for listing and shall be deemed as meeting all criteria set forth in subrules 13.4(3)—(6) throughout the duration of their employment with the agency or FMCS.

**13.4(9) *Grandfather clause.*** Any person listed prior to the enactment of this chapter shall be deemed as meeting all criteria set forth in subrules 13.4(3), (4) and (6).

**621—13.5(20) Independent contractor agreement.** An ad hoc mediator must enter into an

independent contractor agreement with the agency prior to receiving mediation assignments. The independent contractor agreement between the ad hoc mediator and the agency shall establish the hourly rate, reimbursable fees and expenses, duration, and other terms and conditions.

**621—13.6(20) Advocacy and conflict of interest.**

**13.6(1) *Conflict of interest.*** The board shall determine whether a person has a conflict of interest which may require denial of an application or removal from the list or from individual assignments. A conflict of interest arises where:

- a.* a mediator is or has been an employee or advocate for a party to the mediation within the prior two years; or
- b.* a mediator's immediate family, or any other person with whom the mediator has close, personal ties is an interested party in the outcome of the mediation; or
- c.* any other matter that may create an appearance of bias, lack of impartiality, or interest in the proceedings to which the mediator may be or has been assigned.

**13.6(2) *Duty to disclose.*** A person applying for inclusion on the list or a person listed has a continuing duty to disclose to the board in writing any potential or actual conflicts of interest as defined in subrule 13.6(1).

**13.6(3) *Disclosure.*** The board may require a mediator to disclose certain matters to the parties of a mediation prior to its commencement. If either party objects to proceeding to mediation with that mediator, the board may assign a different mediator.

**621—13.7(20) Confidentiality.**

**13.7(1) *Exemption from Open Meetings law.*** In accordance with Iowa Code section 20.17(3), communications between the parties and the mediator during the course of a mediation shall be exempt from the provisions of chapter 21 of the Iowa Code.

**13.7(2) *Mediator privilege.*** In accordance with Iowa Code section 20.31(2), a mediator shall not testify in judicial, administrative, or grievance proceedings regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation.

**13.7(3) *Exception.*** Subrule 13.7(2) shall not apply in any of the following circumstances:

- a.* if the testimony, production, or disclosure is required by statute;
- b.* if the testimony, production, or disclosure provides evidence of an ongoing or future criminal activity; or
- c.* if the testimony, production, or disclosure provides evidence of child abuse as defined in Iowa Code section 232.68(2).

**621—13.8(20) Complaints.** Any affected person or party shall direct a complaint against a mediator from the list to the board. The board will consider the complaint and other relevant information and take such action it deems appropriate.

**621—13.9(20) Inactive status.** A member of the list who continues to meet the criteria for inclusion on the list shall inform the agency if he or she is unavailable for assignment on a temporary basis because of illness, vacation, schedule, or other reasons. That member will not receive assignments during his or her unavailability.

These rules are intended to implement Iowa Code sections 20.1, 20.6 and 20.20.

ITEM 3. Adopt the following **new** 621—chapter 14:

## CHAPTER 14 ARBITRATORS

**621—14.1(20) Scope.** This chapter applies to all arbitrators listed on the agency's qualified arbitrator roster and to all applicants for listing on the roster.

**621—14.2(20) Definitions.**

*"Advocate"* is a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, collective bargaining which includes mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. *"Advocate"* includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. *"Advocate"* also includes persons directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

*"Arbitrator"* means a person serving as a neutral decision-maker in interest arbitrations, grievance arbitrations, or teacher termination adjudications.

*"Grievance arbitration"* means the proceedings on an alleged contract violation as provided in a collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

*"Grievance arbitrator"* means a person serving as a neutral decision-maker in a grievance arbitration.

*"Interest arbitration"* means the binding arbitration contemplated by Iowa Code section 20.22 or by an impasse agreement entered pursuant to Iowa Code section 20.19.

*"Interest arbitrator"* means a person serving as a neutral decision-maker in an interest arbitration.

*"Qualified arbitrator roster"* or *"roster"* means the list maintained by the agency of arbitrators who have met the criteria set forth in this chapter.

*"Teacher termination adjudication"* means the proceedings contemplated by Iowa Code section 279.17.

*"Teacher termination adjudicator"* means a person serving as a neutral decision-maker in a teacher termination adjudication.

**621—14.3(20) Roster and status of members.**

**14.3(1) *The roster.*** The agency shall maintain a roster of arbitrators consisting of persons who meet the criteria for listing contained in rule 621—14.5(20) and who remain in good standing.

**14.3(2) *Adherence to standards and requirements.*** Persons listed on the roster shall comply

with the agency's administrative rules pertaining to arbitrators. Arbitrators shall conform to the ethical standards and procedures set forth in the current Code of Professional Responsibility for Arbitrators of Labor Management Disputes, as approved and published by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association.

**14.3(3) *Status of arbitrators.*** Persons who are listed on the roster are not employees of the State of Iowa. A selected arbitrator's contractual relationship is solely with the parties to the dispute.

**14.3(4) *Roster listing fee.*** An annual listing fee of \$150.00 for each roster member is established to maintain the roster. Roster members shall remit payment to the agency by November 1 each year. This fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

**621—14.4(20) Fees of ~~neutrals~~ arbitrators.** (*Transfer from rule 621—1.8*) Qualified arbitrators ~~and teacher termination adjudicators appointed~~ selected from lists the roster maintained by the board may be compensated by a sum not to exceed \$1,200 per day of service, plus their necessary expenses incurred.

**621—14.5(20) Listing on the roster.**

**14.5(1)** The roster shall consist of three categories of arbitrators:

- a. interest arbitrators;
- b. grievance arbitrators; and
- c. teacher termination adjudicators.

Persons may be listed on the roster in each category in which they meet the criteria.

**14.5(2) *Initial application procedures.*** Persons seeking to be listed on the roster in one or more categories must complete and submit an application to the board. Applicants shall submit at least one reference from management and one reference from labor and applicable writing samples. The board will review the application under the criteria, as set forth in subrules 14.5(3), (4), (5), and (6), and shall make a final decision whether an applicant will be listed on the roster and for which category or categories an applicant qualifies. Each applicant shall be notified in writing of the board's decision.

**14.5(3) *Knowledge and abilities.*** Applicants must establish requisite knowledge and abilities of the following:

- a. For listing as an interest arbitrator on the roster:
  - (1) good verbal and written communication skills;
  - (2) the ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
  - (3) knowledge of Iowa Code chapter 20, the agency's rules, and principles and practices of contracts, public finance, and labor relations; and
  - (4) the ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, "timely" means within 15 days after the interest arbitration hearing pursuant to Iowa Code section 20.22(9) or in a timeframe established by an impasse agreement entered pursuant to Iowa Code section 20.19.
- b. For listing as a grievance arbitrator on the roster:
  - (1) good verbal and written communication skills;
  - (2) the ability and willingness to travel throughout Iowa and to work prolonged and unusual

hours;

(3) knowledge of arbitral principles and practices, contracts, and labor relations; and

(4) the ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, “timely” means within the timeframe established by the parties’ collective bargaining agreement entered pursuant to Iowa Code chapter 20.

c. For listing as a teacher termination adjudicator on the roster:

(1) good verbal and written communication skills;

(2) the ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;

(3) knowledge of Iowa Code section 279.17; and

(4) the ability to review adjudicatory records developed by another body, hear legal arguments in a fair and impartial manner, and prepare and issue clear, reasoned and timely decisions. For purposes of this subparagraph, “timely” means within 15 days after the teacher termination adjudication hearing pursuant to Iowa Code section 279.17(7).

**14.5(4) Experience.** Applicants must demonstrate requisite experience in labor relations or arbitration in the category in which the applicant seeks listing in one of the following ways:

a. For listing as an interest arbitrator on the roster:

(1) Issuance of at least four (4) fact-finding and/or interest decisions;

(2) At least three years’ experience as a mediator in collective bargaining interest disputes with training and experience in conducting hearings and issuing reasoned awards; or

(3) At least five years’ experience in labor relations or labor law with training and experience in conducting hearings and issuing reasoned awards.

b. For listing as a grievance arbitrator on the roster:

(1) Issuance of at least four (4) grievance awards; or

(2) At least five years’ experience in labor relations or labor law with training and experience in conducting hearings and issuing reasoned awards.

c. For listing as a teacher termination adjudicator on the roster:

(1) Issuance of at least four (4) decisions rendered in an appellate capacity; or

(2) At least five years’ experience in the field of education with training and experience in reviewing adjudicatory records and issuing reasoned decisions.

d. The board may give credit against the years of experience requirement to a candidate who has received a masters or equivalent degree in a related area, or who has adjudicatory experience in a field or fields other than labor relations.

**14.5(5) Conflict of interest.** Prior to inclusion on the roster, all applicants must disclose potential conflicts of interest as defined in subrule 14.8(1).

**14.5(6) Training.** Prior to inclusion on the roster as an interest arbitrator, applicants must complete formal training provided by the agency.

**14.5(7) Exemption.** Applicants who qualify for and complete the agency’s interest arbitrator mentorship program, as outlined in rule 621—14.6(20), shall be exempt from the criteria set forth in subrules 14.5(4)a. and 14.5(6).

**14.5(8) Duration of listing.** Listing on the roster shall be for a term of three years.

**14.5(9) Renewal application.**

a. The board shall notify a roster member not less than 120 days before the expiration of his or her three-year term of the procedures necessary to continue inclusion on the roster.

b. Persons desiring to renew their listing must submit a written application to the board not less than 60 days before the expiration of their three-year term.

c. When reviewing a renewal application, the board shall consider the following criteria, plus any other relevant information, in determining whether to renew the person's listing:

- (1) demonstration of the requisite knowledge and abilities as listed in subrule 14.5(3);
- (2) acceptability, which may be based on the agency's records that show the number of times the arbitrator's name has been proposed to the parties and the number of times he or she has been selected. Such cases will be reviewed for extenuating circumstances, such as length of time on the roster or prior history;
- (3) timeliness of decisions;
- (4) feedback from the parties; and
- (5) attendance at agency-sponsored events, including conferences and trainings.

d. The board shall issue and serve in accordance with subrule 621—2.15(2) a written decision granting or denying the renewal application within 60 days of receipt of the completed application.

(1) If granted, the roster member shall remit payment of the annual listing fee in accordance with subrule 14.3(4).

(2) If denied, the renewal applicant may request reconsideration of the denial within 14 days of issuance of the denial. The board shall hold a hearing conducted in accordance with 621—chapter 2 within 60 days of the request for reconsideration and shall issue its final ruling within 30 days of the hearing. Absent a timely request for reconsideration, the board's denial of the renewal application becomes final, and the arbitrator shall be removed from the roster.

**14.5(10) Grandfather clause.** Any arbitrator listed on the roster prior to the enactment of this chapter shall be deemed to meet all criteria set forth in subrules 14.5(3), (4), and (6) for up to three years following the date of enactment. For purposes of renewal, the agency shall divide arbitrators listed on the roster at the time of the enactment of this chapter into three groups with staggered renewal dates and will notify each group when its renewal application is due.

## **621—14.6(20) Interest arbitrator mentorship program.**

**14.6(1) Goal of program.** It is a goal of the board to increase the number of Iowa residents qualified to be on the roster. Such increase should provide constituents additional arbitrator options that have lesser reimbursable expenses, such as mileage and accommodations, and are more familiar with situations facing the parties. The board may suspend this program at any time.

**14.6(2) Application procedures.** Persons seeking to participate in the program must complete and submit an application on a form prescribed by the board. The board will review the application and make a final decision whether an applicant qualifies for the program in accordance with subrule 14.6(3). Each applicant shall be notified in writing of the board's decision.

**14.6(3) Qualifications.** To be eligible to participate in the program, an applicant must meet the following qualifications:

- a. be a resident of the State of Iowa at the time of application and throughout the duration of the mentorship program and maintain the residency for the first year of listing;
- b. have at least five (5) years of collective bargaining experience in the public or private sector as an advocate, mediator, or combination of both;
- c. possess good verbal and written communication skills;
- d. have the ability and willingness to travel throughout Iowa and to work prolonged and/or unusual hours; and
- e. not have a conflict of interest as defined in subrule 14.8(1).



**14.6(4) *The program.*** The program shall consist of the following steps:

- a. formal training by the agency on Iowa Code chapter 20, the agency's administrative rules, and how to conduct hearings and write awards;
- b. shadowing of at least two (2) interest arbitrations conducted by an experienced arbitrator listed on the roster; and
- c. submission of at least two (2) mock interest arbitration awards that comply with statutory and regulatory requirements. The board may require additional mock awards if deemed necessary. Successful completion of the program will result in the participant being included as an interest arbitrator on the roster. Participants must satisfy the criteria for grievance arbitrators and teacher termination adjudicators outlined in subrules 14.5(3) and (4) prior to inclusion on the roster under those categories.

**621—14.7(20) Biography.** Each roster member shall maintain a biography in a form prescribed by the board. The roster member is responsible for ensuring that his or her biography is accurate and current. The agency bears no responsibility for inaccurate, incomplete, or outdated information on biographies. The biography shall contain the following:

- a. name, address, phone number, and email address;
- b. current and past employment, including his or her representative client base if not readily identifiable;
- c. educational history;
- d. per diem rate and other applicable charges or fees;
- e. relevant experience, including but not limited to listing on other arbitrator rosters or memberships/associations; and
- f. potential or actual conflicts of interest as defined in subrule 14.8(1).

**621—14.8(20) Conflict of interest.**

**14.8(1) *Conflict of interest.*** The board shall determine whether a person has a conflict of interest which may require denial of an initial or renewal application or removal from the roster or from individual selections. A conflict of interest arises where:

- a. an arbitrator is or has been an employee or advocate for a party to the arbitration within the prior two years;
- b. an arbitrator's immediate family, or any other person with whom the arbitrator has close, personal ties, is an interested party in the outcome of the arbitration; or
- c. any other matter that may create an appearance of bias, lack of impartiality, or interest in the proceedings to which the arbitrator may be or has been selected.

**14.8(2) *Duty to disclose.*** A person applying for inclusion on the roster or a person listed on the Roster has a continuing duty to disclose to the board in writing any potential or actual conflicts of interest as defined in subrule 14.8(1).

**14.8(3) *Disclosure.*** The board may require an arbitrator to disclose certain matters to the parties of an arbitration prior to its commencement. If either party objects to proceeding to arbitration with that arbitrator, the board may require the parties to make an alternate selection.

**621—14.9(20) Procedures for discipline and removal.**

**14.9(1) *Grounds.*** Probation, suspension, or removal may be based upon one or a combination of any of the following, including but not limited to:

- a. failure to comply with statutory provisions, the agency's administrative rules, and agency guidelines and policies;

- b. delinquency in submitting awards;
- c. existence of a conflict of interest as defined in subrule 14.8(1) that requires exclusion from the Roster;
- d. failure to disclose to the board or the parties any conflict of interest as defined in subrule 14.8(1);
- e. failure to demonstrate the requisite knowledge and abilities listed in subrule 14.5(3);
- f. any other reason the board deems discipline or removal to be in the best interest of the agency, its constituents, or the public-at-large.

**14.9(2) *Automatic removal.*** Any member who fails to pay the annual listing fee pursuant to subrule 14.3(4) shall be removed from the roster, absent good cause shown for why removal is inappropriate. Any member who fails to submit a renewal application pursuant to paragraph 14.5(9) “b” shall be removed from the roster 30 days after the expiration of the term, absent good cause shown for why removal is inappropriate.

**14.9(3) *Filing of a complaint.*** Any affected person or party may file with the board a complaint against an arbitrator from the roster. The board may also file a complaint pursuant to this subrule. Such complaint shall be in writing and shall contain:

- a. the name, address, telephone number, and email address of the complaining party;
- b. the dispute(s) in which the complaining party has interacted with the arbitrator;
- c. the specific allegations on which the complaint is based;
- d. the requested discipline;
- e. the signature of the complaining party; and
- f. the date on which the complaint was prepared.

The board shall serve written notice of the complaint in accordance with rule 621—2.15 on the arbitrator within 14 days of receipt of the complaint.

**14.9(4) *Preliminary investigation.*** Upon receipt of a complaint from an affected person or party, the board shall conduct a preliminary investigation into the allegations. In conducting the investigation, the board may require the production of evidence, including affidavits and documents. If the investigation reveals the complaint has no basis in fact or if the complaint is informally resolved with the approval of the board, the complaint shall be dismissed and the parties notified in accordance with rule 621—2.15.

**14.9(5) *Procedures.*** If the complaint is not dismissed following the preliminary investigation, the board shall schedule the complaint for hearing and notify the parties in accordance with rule 621—2.2. The hearing shall be held within 60 days of the completion of the preliminary investigation or the filing of a board-initiated complaint. The hearing and all subsequent proceedings and filings shall be in accordance with 621—chapter 2.

**14.9(6) *Timely resolution of complaints.*** Complaints filed with the board shall be resolved within 180 days unless good cause is shown for an extension. The board will notify the parties prior to taking action to extend this time limitation upon its own motion.

**621—14.10(20) Inactive status.** A member of the roster who continues to meet the criteria for listing on the roster shall inform the agency if he or she is unavailable for selection on a temporary basis because of illness, vacation, schedule, or other reasons. That member's name will not be included on a list of arbitrators sent to parties during his or her unavailability.

These rules are intended to implement Iowa Code sections 20.1, 20.6, 20.22 and 279.17.

September 10, 2014.

/s/  
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Michael G. Cormack, Chair  
Public Employment Relations Board